

**CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF MALTA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

New Double Taxation Agreement (DTA) between the U.S. and Malta, signed in August 2008

- Intended to eliminate barriers to cross-border trade and investment while preventing offshore tax evasion.
- Replaces prior DTA which was terminated in 1997 due to potential “Treaty Shopping” and recognizes significant changes to Maltese domestic tax law which provide transparency and protection.
- Designed to ensure that U.S. and Maltese citizens are taxed only once on their profits and income, and to limit withholding payments on dividends, royalties and other unearned income.
- Contains strong limitation of benefits provisions to prevent abuse of the DTA by third country nationals seeking to avoid taxation.

Provisions of most interest to business and individuals are limitations on each country’s right to tax income derived from its territory by residents of the other country

- U.S. and Malta authorities agree not to tax business income derived from sources within their countries by residents of the other country UNLESS business activities by the foreign person or business are substantial enough to constitute a permanent establishment.
- Residents of one country providing services in the other country also aren’t subject to tax in that country as long as their activities don’t exceed specified minimums.
 - Generally as long as don’t work in the other country more than 183 days in any 12-month period.
- Pensions and similar payments are taxable only by the country which pays them – even if the person is resident in the other country.
- Some payments – e.g., dividends and royalties – are taxable by either country (*10 percent maximum withholding*). However, a tax credit must be allowed in the other country if, for example, the country which is the source of a dividend assesses tax at the time it is paid.
- DTA cannot be applied in a way which will deny any taxpayer of either country any benefits he would have been entitled to under the domestic law of his country or under any other treaty between the U.S. and Malta.
- Countries can’t discriminate: i.e., they can’t tax a resident of the other country at a higher rate than they would have taxed their own citizens under the same circumstances.

Strong provisions to limit benefits to prevent the use of the DTA for residents of third countries interested in “treaty shopping”

- Prevents businesses or individuals from third countries from setting up a “shell” entity in either Malta or the U.S. which is used to pass income through – thereby avoiding taxation – but does not have any other substantial business or activity in the country.